CF0000057491

(02)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 716 OF 89.

Appellants :- 1.Dukaliram son of Panikram aged about (49) years,

2. Jay Kumar son of Dukaluram, aged about 20 years.

3. Chandrama bai w/o Dukaliram aged about 40 years,

All resident of Kahar Chuha, Police Station Lelunga, Tahsil Ghargbora, District Raigarh.(M.P.)

(in Jail)

versus.

Respondent :- The State of Madhya Pradesh.

Appeal under section 374 Code of Criminal Procedure against the judgment and conviction dated 10.6.1989 passed by Shri K.L.Kori IInd Additional Sessions Judge Raigarh. in S.T.No. 45/89 (State vs. Dukaluram)

YOGENDRA SINGH KANWAR
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HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 716 OF 1989

Dukaluram and others

Vs.

State of Chhattisgarh

J U D G M E N T

(Dated 26th July, 2005)

(53)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 716 OF 1989

Dukaluram & Others

Vs.

State of Chhattisgarh

CORAM : HON'BLE SHRI FAKHRUDDIN, J &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J

Shri N.K. Chatterjee, counsel for the appellants.

Shri J.D. Bajpai, Govt. Advocate/Addl. Public Prosecutor and Shri Akhil Mishra, Panel Lawyer for the State.

Per Dilip Raosaheb Deshmukh, J

J U D G M E N T

(Delivered on 26th July, 2005)

Heard.

2. This appeal is directed against the judgment delivered in Sessions Trial No. 45/1989 by the Second Additional Sessions Judge, Raigarh, on 17-6-1989 whereby appellant Dukaluram was convicted for the commission of an offence punishable under Section 302 of the Indian Penal Code for committing the murder of his son Rajkumar by administering poison and sentenced to undergo imprisonment for life. Appellants Chandrama Bai and Jai Kumar were also convicted under Section 302 read with Section 34 of the Indian Penal Code for sharing the common intention with Dukaluram for committing the murder of Rajkumar and sentenced to undergo imprisonment for life.

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3. Appellant Dukaluram had expired in the year 1992, hence the appeal of Dukaluram has abated. This appeal is considered only so far as the impugned judgment relates to appellants Chandrama Bai and Jai Kumar.

4. Admittedly appellant No.2 Jai Kumar is the son of appellant No.1 Dukaluram and appellant No.3 Chandrama Bai. Deceased Rajkumar was the brother of Jai Kumar.

5. Briefly stated the prosecution story is that on 17-4-1988 there was a Panchayat in village Kaharchua relating to illicit relation of Chandrama Bai with one Nankiram. In that Panchayat, deceased Rajkumar had said that his mother Chandrama Bai had illicit relation with Nankiram. The wife of Rajkumar had also corroborated the statement of Rajkumar in the Panchayat. The Panchayat had imposed a fine of Rs.500/- against deceased Rajkumar and his wife, since the allegations made by them were found to be false. A document Ex.P/9 was executed in the Panchayat. The appellants thereafter frequently quarrelled with Rajkumar on this issue. On 2/1/1989 the appellants again quarrelled with Rajkumar and in furtherance of the common intention of the appellants, appellant Dukaluram administered poison i.e. aluminium phosphide insecticide to Rajkumar. Thereafter, the appellants tied Rajkumar to a tree and beat him. Sukaluram (P.W.3), uncle of Rajkumar, freed Rajkumar and took him to Gerupani in the house of Madan Gond, father-in-law of the deceased. Rajkumar narrated to Madan Gond that

Dukaluram had administered some bitter liquid to him and thereafter Dukaluram, Chandrama Bai and Jai Kumar had tied him to a tree and had beaten him. Soon after making this statement, Rajkumar became unconscious and died on the same day. Madan Gond lodged the first information report, Ex.P/17, on 2/1/1989. Post mortem on the body of Rajkumar was conducted by Dr. Shailendra Upadhyaya (P.W.6), who did not find any external injury on the person of Rajkumar. He opined that cause of death was asphyxia due to some poison. The stomach, portion of small intestine, large intestine, a piece of liver, spleen, right and left kidneys, right and left lungs were preserved and sent to State Forensic Science Laboratory, Sagar for chemical analysis. Vide Ex.P/22, it was opined that stomach, large and small intestine had contained insecticide aluminium phosphide (sulphas). One rope was seized at the instance of Dukaluram vide Ex.P/6. One bamboo stick was seized from the appellant Jai Kumar. After completion of the investigation, the appellants were prosecuted for committing murder of Rajkumar in furtherance of their common intention.

6. The accused/appellants abjured the guilt and claimed trial. The prosecution examined as many as 14 witnesses in this case. Learned trial Judge relying upon the evidence led by the prosecution convicted the accused/appellant Dukaluram under Section 302 of IPC and accused/appellants Chandrama Bai and

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Jai Kumar under Section 302 read with Section 34 of IPC and sentenced them as aforesaid.

7. Shri Chatterjee, learned counsel for the appellants, has mainly contended in this appeal that so far as appellant Jai Kumar is concerned, there is absolutely no evidence against him. The testimony of P.W.2 Madan Gond clearly shows that the deceased had told him that poison was administered by Dukaluram in the house at Kaharchua. So far as the story of assault after tying Rajkumar to a tree is concerned, no external injury whatsoever was found on the person of Rajkumar. He also argued that P.W.11 Amar Sai in cross-examination in para 10 on being questioned by the Court had clearly stated that appellant Jai Kumar was not present in the house at the time of occurrence, thus, learned counsel for the appellant contended that there was not even an iota of evidence against appellant Jai Kumar to connect him with the murder of Rajkumar.

8. On the other hand, Shri Bajpai, learned Govt. Advocate/Addl. Public Prosecutor and Shri Mishra, learned Panel Lawyer, opposed the contentions and stated that there was common intention and pursuant to the common intention the poison was administered.

9. So far as the question of death of Rajkumar due to poisoning is concerned, as per the testimony of Dr. Shailendra Upadhyaya (R.W.6), who conducted the autopsy vide report Ex.P/11, and the

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report of FSL Ex.P.22, there remains no doubt that death of Rajkumar was due to administering poison insecticide aluminium phosphide (sulphas) and was thus homicidal. Learned counsel for the appellants has also not assailed this finding of the trial Judge.

10. So far as the complicity of appellants Jai Kumar or Chandrama Bai in administering the poison to Rajkumar is concerned, the evidence of Madan Gond (P.W.2) has to be looked into. Madan Gond (P.W.2) is the witness to whom Rajkumar had narrated that in the house at Kaharchua his father Dukaluram had administered some bitter liquid to him and had thereafter tied him to a kathal tree with a rope with the assistance of Chandrama Bai and Jai Kumar. So far as the story relating to tying the deceased Rajkumar to a kathal tree by a rope and thereafter assault by the appellants is concerned, it is worthwhile to note that during post mortem examination no external injury was found on the person of Rajkumar. So far as the dying declaration of Rajkumar made before P.W.2 Madan Gond is concerned, it clearly implicates only appellant Dukaluram and none else. The testimony of Amar Sai (P.W.11) in para 10 also clearly rules out the complicity of appellant Jai Kumar in administering poison to deceased Rajkumar.

11. After giving our thoughtful consideration to the evidence led by the prosecution, we find that there is evidence only against Dukaluram regarding administering poison to Rajkumar. So far as appellant Jai Kumar is concerned, we do not find any evidence

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to bring home the guilt of appellant Jai Kumar under Section 302 read with Section 34 IPC.

12. Shri Chatterjee, learned counsel for the appellant contended that he has instructions to appear only for appellant No. 2 Jai Kumar however he submitted that the appellant No. 3 Chandrama Bai who has been released on probation on 19-8-2000, is also entitled to be considered on the same footing since evidence against her regarding administering poison to deceased Rajkumar is lacking. We have gone through the evidence and the material on record. The dying declaration relating to administering poison even if is taken to be true, it is against Dukaluram and so far as Chandrama Bai is concerned the prosecution has failed to prove the case beyond reasonable doubt. Viewed from this, in the ends of justice, we give benefit to appellant Chandrama Bai also.

13. In the result, so far as appellant no.1 Dukaluram is concerned, his appeal abates and is dismissed accordingly as abated. So far as appellants no.2 Jai Kumar and no.3 Chandrama Bai are concerned, the appeal is allowed. Appellants Jai Kumar and Chandrama Bai are acquitted of the charge under Section 302/34 IPC.

14. Before parting, we record our appreciation for the assistance rendered by learned counsel for the parties.

Sd/-
Fakhruddin
Judge
26-7-2005

Sd/-
Dilip Raosaheb
Deshmukh
Judge
26-7-2005

Hande/-